

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 1922

SPONSOR: Finance and Taxation Committee and Senator Bennett

SUBJECT: Water & Wastewater Utilities/Fees

DATE: April 1, 2004 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Caldwell</u>	<u>Caldwell</u>	<u>CU</u>	<u>Favorable</u>
2.	<u>Cooper / Perrin</u>	<u>Yeatman</u>	<u>CP</u>	<u>Favorable</u>
3.	<u>Keating</u>	<u>Johansen</u>	<u>FT</u>	<u>Fav/CS</u>
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill revises provisions under chapter 163, the “Florida Interlocal Cooperation Act of 1969”, relating to a separate legal entity that wants to acquire, own, construct, improve, operate, and manage or finance a public utility. The bill provides definitions of terms and provides procedures for a host government to accept or reject the separate legal entity’s proposal. The bill requires that any transfer or payment by a separate legal entity to another local government must be made solely from user fees or other charges or revenues generated from customers that are physically located within the jurisdictional or service delivery boundaries of the local government receiving the transfer or payment. The bill also codifies existing law regarding what happens to any gains or losses in the purchase of a privately-owned utility by specifying that any loss in future revenues must be borne by the shareholders of the utility

In addition, the bill requires water and wastewater utilities with annual revenues above \$200,000 that are regulated by the Public Service Commission to pay regulatory assessment fees every six months rather than every 12 months.

This bill amends ss. 163.01 and 367.145 of the Florida Statutes and creates s. 367.0813.

II. Present Situation:

Section 163.01, F.S., is known as the “Florida Interlocal Cooperation Act of 1969.” The purpose of the act is to permit local governmental units to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage and thereby to provide services and facilities in a manor and pursuant to forms of governmental organization that will accord best with geographic, economic, population, and other factors influencing the needs and development of local communities.

Paragraph (g) of subsection (7) of s. 163.01, F.S., provides that any separate legal entity created under chapter 163, F.S., the membership of which is limited to municipalities and counties of the state, may acquire, own, construct, improve, operate, and manage public facilities, or finance facilities on behalf of any person, relating to a governmental function or purpose, including, but not limited to, wastewater facilities, water or alternative water supply facilities, and water reuse facilities, which may serve populations within or outside of the members of the entity.

Subsection 367.145(1), F.S., requires water and wastewater utilities that are regulated by the Public Service Commission to pay regulatory assessment fees once a year in conjunction with the filing of its annual financial report. The amount of the regulatory assessment can not exceed 4.5 percent of the gross revenues of the utility derived from intrastate business, excluding sales for resale made to a regulated company. Annual reports are due by March 30 of the following year. Financial reports are used to determine the amount due in regulatory assessment fees. This practice results in fewer mistakes which would otherwise require a “true-up” of rates.

Section 350.113, F.S., authorizes the Florida Public Service Commission Regulatory Trust Fund in the State Treasury where all regulatory assessment fees are deposited. Subsection 350.113(3), F.S., requires each regulated company under the jurisdiction of the commission to pay regulatory assessment fees every six months.

III. Effect of Proposed Changes:

Section 1 amends s. 163.01(7)(g), F.S., to add to the membership of any separate legal entity created under this act, a special district in addition to a municipality or county or both.

The bill also provides definitions for the following terms:

- “Host government” means the governing body of the county, if the largest number of equivalent residential connections currently served by a system of the utility is located in the unincorporated area, or the governing body of a municipality, if the largest number of equivalent residential connections currently served by a system of the utility is located within that municipality’s boundaries.
- “Separate legal entity” means any entity created by interlocal agreement the membership of which is limited to two or more special districts, municipalities, or counties of the state, but which entity is legally separate and apart from any of its member governments.
- “System” means a water or wastewater facility or group of such facilities owned by one entity or affiliate entities.
- “Utility” means a water or wastewater utility and includes every person, separate legal entity, lessee, trustee, or receiver owning, operating, managing, or controlling a system, or proposing construction of a system, who is providing, or proposing to provide, water or wastewater service to the public for compensation.

The bill provides that a separate legal entity that seeks to acquire any utility shall notify the host government in writing by certified mail about the contemplated acquisition not less than 30 days before any proposed transfer of ownership, use, possession of any utility assets by such separate legal entity.

Within 30 days following receipt of the notice, the host government may adopt a resolution to become a member of the separate legal entity, adopt a resolution to approve the utility acquisition, or adopt a resolution to prohibit the utility acquisition by the separate legal entity if the host government determines that the proposed acquisition is not in the public interest.

If the host government adopts a membership resolution, the separate legal entity shall accept the host government as a member on the same basis as its existing members before any transfer of ownership, use, or possession of the utility or the utility facilities. If a host government adopts a resolution to approve the utility acquisition, the separate legal entity may complete the transaction. If a host government adopts a prohibition resolution, the separate legal entity may not acquire the utility within the host government's territory without the specific consent of the host government by future resolution. If a host government does not adopt a prohibition resolution or an approval resolution, the separate legal entity may proceed to acquire the utility after the 30-day notice period without further notice.

After the acquisition or construction of any utility system by a separate legal entity, revenues or any other income may not be transferred or paid to a member of a separate legal entity, or to any other special district, county, or municipality, from user fees or other charges or revenues generated from customers that are not physically located within the jurisdictional or service delivery boundaries of the member, special district, county, or municipality receiving the transfer or payment. Any transfer or payment to a member, special district or other local government must be solely from user fees or other charges or revenues generated from customers that are physically located within the jurisdictional or service delivery boundaries of the member, special district, or local government receiving the transfer of payment.

The bill provides that s. 163.01(7)(g), F.S., is an alternative provision otherwise provided by law as authorized in s. 4, Art. VIII of the State Constitution for any transfer of power as a result of an acquisition of a utility by a separate legal entity from a municipality, county, or special district.

Section 2 creates s. 367.0813, F.S., which provides that in order to provide appropriate incentives to encourage the private sector to participate in the investment in water and wastewater infrastructure, to protect private sector property rights of a utility's shareholders, and to avoid an additional burden of costs placed on ratepayers by re-litigating this issue, the Legislature affirms and clarifies the clear policy of Florida that gains or losses from a purchase or condemnation of a utility's assets which results in the loss of customers served by such assets and the associated future revenue streams shall be borne by the shareholders of the utility.

Section 3 provides that if any provisions of this act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this act which can be given effect without the invalid provisions or application, and to this end the provisions of this act are declared severable.

Section 4 amends subsection 367.145(1), F.S., to make the payment schedule for regulatory assessment fees for large water and wastewater utilities consistent with the provisions of section 350.113, F.S., which are applicable to all other utilities regulated by the Public Service Commission. This requirement evens out the receipt of regulatory assessment fees paid by the water and wastewater industry and provides for more timely recovery of the costs of regulating

the industry. The commission states that the 60 large companies will pay approximately \$1.5 million in July and an additional \$1.5 million in January. The 120 or so small water and wastewater utilities, those with annual revenues of less than \$200,000, will continue to be required to pay the regulatory fees only once a year at the time they file their annual financial report. According to the commission, the larger Class A and B utilities should have little difficulty in estimating the semi-annual payments.

Section 5 provides that this act shall take effect upon becoming a law and shall apply to all contracts pending on or after that date.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

The bill changes the timing of the payments of regulatory assessment fees by large water and wastewater utilities from annual to semi-annual. This change does not impact the total annual amount of regulatory assessments paid by such utilities.

B. Private Sector Impact:

Large water and wastewater utilities (Class A and B) will have to adjust their cash flow to accommodate the semi-annual payment. Payments of approximately \$1.5 million are due by July 31 and January 30 of each year. The total amount of the payments, which is approximately \$3,000,000, will not change. Smaller Class C utilities generally remit a total of approximately \$500,000 annually.

The bill also codifies existing law regarding what happens to any gains or losses in the purchase of a privately-owned utility by specifying that any loss in future revenues must be borne by the shareholders of the utility.

C. Government Sector Impact:

The Public Service Commission will be better able to manage its cash flow and will provide for more timely recovery of the costs of regulating the industry.

The bill gives local governments in which other governments want to operate a utility, certain protections which do not currently exist. These protections are:

- Notice that a separate legal entity created by inter-local agreement wants to operate within the host government's territory.
- Automatic membership of the host government.
- The ability to oppose the separate legal entity's service in the host governments' territory.
- That any transfer or payment by the separate legal entity to a member or other local government must be made solely from user fees or other charges or revenues generated from customers that are physically located within the jurisdictional boundaries of the member or local government receiving the transfer or payment.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.